

BRB No. 04-0579 BLA

HOWARD HOLLAND)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LEECO, INCORPORATED)	DATE ISSUED: 03/11/2005
)	
and)	
)	
TRANSCO ENERGY COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Phillip Lewis, Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, PSC), Pikeville, Kentucky, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-5457) of Administrative Law Judge Daniel J. Roketenetz (the administrative law judge) on a subsequent claim for benefits filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). In considering this subsequent claim for benefits, the administrative law judge found that the

newly submitted evidence established the existence of pneumoconiosis, one of the elements previously adjudicated against claimant, and therefore, found a change in a condition of entitlement established. 20 C.F.R. §§718.202(a)(1), (4), 725.309(d). Considering all the evidence, however, the administrative law judge found it failed to establish a total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

Claimant contends that the administrative law judge erred in not finding total disability established, stating that he was unable to walk for any distance, was unable to climb stairs, experienced smothering at night, and was no longer able to mow his own lawn or enjoy hobbies due to shortness of breath. Claimant concluded by stating that when considering the total evidence of record, including the claimant's testimony, his history of exposure, and the medical evidence, it was obvious the administrative law judge erred in finding that claimant failed to establish total disability. Claimant's Brief at 4 (unpaginated). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant does not challenge any of the administrative law judge's findings regarding the medical evidence on total disability. Instead, he contends that his testimony regarding his breathing problems and inability to exert himself establishes total disability. Lay testimony alone is insufficient to establish total respiratory disability, however. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). As this is the only discernable challenge to the administrative law judge's finding, and claimant fails to allege any specific error with the administrative law judge's evaluation of the medical evidence of record, claimant has failed to sufficiently challenge the administrative law judge's finding that the evidence fails to establish total respiratory disability. See 20 C.F.R. §802.211(b). As claimant has not raised any specific allegations of factual or legal error in the administrative law judge's decision, we are unable to review the administrative law judge's decision on appeal. 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge